

REMARKS

Claims 2-26 are currently pending in the present application, with Claims 15 and 26 being amended. Reconsideration and reexamination of the claims are respectfully requested.

The Examiner rejected Claims 2-7 and 19-26 under 35 U.S.C. § 103(a) as being unpatentable over author admitted prior art (page 1, line 10 to page 3, line 14 and Fig. 14 of the present application, hereinafter "APA") in view of Tsurumi et al. (U.S. Patent No. 5,890,910). This rejection is respectfully traversed with respect to the amended claims.

As previously communicated, the present invention is directed to a method and apparatus for downloading music data such as songs or musical pieces to a player, such as a portable MP3 player, wherein the player includes a memory for storing music data. More specifically, the preferred embodiment of the present invention identifies the contents of the player memory to determine what music data is already stored in the player memory. The contents of the player memory is identified by using type data associated with each song or musical piece, the type data typically being one of genre, singer, composer, etc. In accordance with the preferred embodiment, the present invention includes an input device for receiving from a user type data designating certain music data desired by the user (e.g., R&B songs, songs sang by Britney Spears, etc.). In addition, the present invention includes a tuner or a receiver such as a modem for receiving new music data from a music download or broadcasting source, such as broadcast station or network server.

In accordance with the present invention, the type data of the received new music data is compared with the type data of the music data already stored in the player memory, to check whether the player memory already has the received new music data. Additionally, the type data of the new music data is compared with the type data designated by the user. If the player memory does not already have stored the received new music data, and if the type data of the new music data is one that is designated by the user, then the new music data is downloaded. The process is illustrated in Fig. 3 of the present application.

Neither APA nor Tsurumi contain any disclosure of downloading to a player memory music data having type data, AND where the downloaded music data is designated as desired by a user of the portable player, AND the music data is not already stored in a player memory.

As previously communicated, APA simply discusses storing music from a CD to a computer hard drive, and then encoding the music stored in the hard drive for downloading to a portable player. Tsurumi, on the other hand, is directed to a system and method for managing information that is delivered from a host server to a terminal karaoke apparatus. Specifically, Tsurumi discloses a system in which the terminal karaoke apparatus may, at times designated by the user of the terminal apparatus, request and receive from the host the latest release/update of music data. The release/update contains the latest music data such as new songs, as well as commercial information (referred to as "CM" in Tsurumi) that may include advertisement data such as announcement of upcoming concerts, etc. Tsurumi also teaches deleting CM data that may be outdated.

As previously communicated, it is the Applicant's position that Tsurumi does not teach or suggest user designating specific music data based on type data, and downloading the designated music data from a central server if designated music data is not already stored in the portable player. Rather, Tsurumi discloses only periodic updating of the terminal apparatuses with the latest release updates without any regards to any designation by the user whatsoever.

The Examiner in page 12 of the Office Action responded to the Applicant's previous position by insisting that Tsurumi teaches user selection/designation/input of type data via

"the requirement transmitted from a terminal (col. 7, lines 46-52) and/or the editing, at the host, of the release file information (col. 2, lines 52-62; col. 5, lines 19-45, col. 7, lines 46-52). One of the ordinary skill in the art would recognize that file editing is typically performed by a user (person or program) of the system."

The Applicant's reply to the Examiner's response in this regard is as follows. Notwithstanding the amendments made to Claim 26, accepting the Examiner's construction of

“type data” to read on release number (or versions) as disclosed in Tsurumi, the reference simply does not teach or suggest receiving an input from the user of a player of a user terminal designating a type data (or even a release number). Rather, Tsurumi teaches automatically updating to the new release number whenever the new release becomes available from on the host server; it is not a process that is normally controllable by a user from the terminal end.

Col. 7, lines 46-52 of Tsurumi, as cited by the Examiner, simply mentions an alternative method to periodically downloading updated release numbers of commercial information from the central server to a terminal. Specifically, the “requirement” transmitted by the terminal is simply a request to perform an update; it is not a designation of a type data (or even a release number) of any kind. Similarly, col. 2, lines 52-62 of Tsurumi discusses only editing, from the host end, listing of necessary commercial information files to be downloaded to each terminal along with the downloading of a new release number. It is important for the Examiner to understand the distinction between “information files” and “release number” as used in the written description of Tsurumi. Specifically, “information files”, as discussed above, refer to commercial information (e.g., advertisements) that is “pushed” from the host to the individual terminals. These commercial information files have limited life expectancy and expire after certain period of time passes. “Release number,” on the other hand, refer to new sets of music data that are downloaded to a karaoke terminal to update that terminal with new music selections. Update information files are downloaded to a karaoke terminal along with new release numbers, as explained in col. 4., line 61, to col. 2, line 33.

While a user at the host end designates what “necessary” information files should be downloaded with a new release (necessary information files include the advertisements that are to be currently displayed or to be displayed in the near future (see col. 5, lines 1-6), the user from the host end is not designating any music data as recited in the claims. More importantly, there is no designation of type data by a user from the terminal for purposes of selecting music data to be downloaded. Applicant respectfully disagrees with the Examiner’s response and submit that this aspect of the claimed invention is simply not disclosed in Tsurumi.

The Examiner rejected dependent Claims 8 and 18 under 35 U.S.C. § 103(a) as being unpatentable over APA in view of Tsurumi and further in view of Kim et al. (U.S. Patent No. 6,083,009). This rejection is respectfully traversed.

Again, since neither APA nor Tsurumi contain any disclosure of downloading music data that have been designated by their type data, and since Kim fails to make up for this deficiency, Applicant respectfully submit that Claims 8 and 18 are not obvious in view of APA, Tsurumi, and Kim.


In view of the foregoing, Applicant respectfully submits that all of the pending claims are in condition for allowance. Reconsideration and reexamination of the claim are respectfully requested, and an early allowance is solicited. If the Examiner believes it would further advance the prosecution of the present application, he is respectfully requested to contact the undersigned attorney.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 393032014500.

Respectfully submitted,

Dated: March 29, 2005

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